

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

BRYON THOMAS WELLS (001)

DANIEL C BARR

CHANDLER CITY-MUNICIPAL
COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

CHANDLER CITY COURT

Cit. No. #03-P-861784

Charge: 1) CRIMINAL TRESPASS, 1ST DEGREE-RESIDENTIAL/YARD

This Court has jurisdiction of this criminal misdemeanor appeal from the Chandler City Court, pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument, and the court has considered and reviewed the record of the proceedings from the Chandler Municipal Court, the oral arguments of counsel, and the excellent memoranda submitted by the parties. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

1. Factual and Procedural History of the Case

On November 6, 2003, the Appellant, Bryon Wells, entered the fenced residential yard of former Chandler police officer Daniel Lovelace. Disregarding the “No Trespassing” sign on the front closed gate, Appellant entered the front yard, taking the short walkway to the front door, and rang the doorbell.¹ Officer Lovelace’s wife, Tricia Debbs, answered the door via the side-yard and asked Appellant to leave and Appellant did so.² Debbs contacted the Chandler Police Department shortly thereafter, filed a report, and an investigation was initiated, which would later result in criminal charges filed against the Appellant.

Appellant is a reporter for the East Valley Tribune, assigned to cover both the Chandler and Tempe Police Departments.³ Appellant covered the alleged shooting involving Officer Lovelace and the subsequent investigation that later resulted in criminal charges being filed against Officer Lovelace by the Maricopa County Attorney.⁴ Due to these events, the Lovelaces’ placed a “No Trespassing” sign on their front gate to prevent the intrusion of media on their private property. The front gate is supported by five-foot pillars on each side of the gate, attached to a three-foot high cinder block stucco fence, creating an enclosure about the property.⁵ Appellant testified that he had visited the Lovelace home on October 15, 2003, some three weeks prior to the incident in question, concerning Officer Lovelace’s account of the alleged shooting.⁶ In addition, he had left several phone messages regarding the same issue.⁷ Appellant admits that he neither received an invitation nor acquired the Lovelaces’ permission to come to their residence prior to November 6, 2003.⁸

On February 20, 2003, Appellant was charged with criminal trespass in the first degree in violation of A.R.S. § 13-1504(A)(1).⁹ To avoid impropriety, the Scottsdale City Prosecutor instead of the City of Chandler prosecuted the case.¹⁰ The case was tried in the Chandler Municipal Court on May 1, 2003, before the Honorable Ronald Karp. At the conclusion of trial, parties were ordered to submit post-trial memoranda regarding the statutory definitions of “unlawful” and “knowingly” under A.R.S. § 13-105, and case law concerning the significance of

¹ Reporter’s Transcript (hereafter “R.T.”) of May 1, 2003 at 63.

² Id.

³ Id. at 57-58.

⁴ Id. at 62-63.

⁵ Id. at 5-6.

⁶ Id. at 61-62.

⁷ Id. at 62.

⁸ Id. at 67-69.

⁹ Appellant’s Opening Mem. of Dec. 2, 2003 at 1. A.R.S. § 13-1504 has been amended such that the conduct originally described in subsection (A)(1) where a person commits a criminal trespass in the first degree for “knowingly ... [e]ntering or remaining unlawfully in ... a fenced residential yard” now appears in subsection (A)(2) of the amended statute.

¹⁰ Id. at 1-2.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

the “No Trespassing” sign posted on the Lovelaces’ front gate.¹¹ The trial court found Appellant guilty and entered judgment against him on May 21, 2003. Appellant timely filed this appeal on June 11, 2003.

2. Issues Presented

Appellant presented two issues in this case. First, the court must determine whether the trial court properly applied Arizona Revised Statute Annotated § 13-1504(A)(2) (Supp. 2003), or criminal trespass in the first degree. Appellant contends that he never “knowingly” entered the fenced residential yard of former Chandler Police Officer Daniel Lovelace, and that he believed he was licensed, authorized, and otherwise privileged to enter the Lovelaces’ front yard despite the presence of a “No Trespassing” sign prominently displayed on the Lovelaces’ front gate. Second, the court must determine whether the trial court’s interpretation of the statute and its subsequent conviction of Appellant is a violation of Appellant’s First Amendment right to freedom of the press. Appellant claims that the process of newsgathering concerning an issue of public importance is an activity protected by the First Amendment that creates an exemption to criminal liability under A.R.S. § 13-1504(A)(2).

3. Standard of Review

The issues raised by the Appellant are matters of constitutional dimension and statutory construction. While this court views evidence in the light most favorable to upholding any factual findings, I review *de novo* the legal conclusions upon which the trial court’s ruling rests.¹² This court defers to the trial court’s factual findings that are supported by the record and will not reweigh the evidence on appeal unless there is no substantial evidence to support those findings that would require this court to overturn the trial court’s decision.¹³

4. Discussion

Appellant argues that the trial court erred in convicting him of criminal trespass in the first degree because: 1) he believed he was licensed, authorized, and otherwise privileged to enter the Lovelaces’ fenced residential yard; 2) that a “No Trespassing” sign is insufficient to establish the criminality of his conduct without having first acquired the property owner’s consent; and 3) his activity, as a news gatherer concerning an issue of public concern, is protected by the First Amendment. The Prosecution argues that: 1) the evidence presented at trial was sufficient to convict Appellant of criminal trespass in the first degree; 2) that Appellant

¹¹ *Id.* at 2.

¹² *State v. Watkins*, ___ Ariz. ___, 88 P.3d 1174, 425 Ariz. Adv. Rep. 9 (App. 2004).

¹³ *State v. Rodriguez*, 205 Ariz. 392, 71 P.2d 919 (App. 2003).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

had reasonable notice prohibiting entry into the Lovelaces' front yard; 3) that he knowingly entered the fenced residential yard disregarding the "No Trespassing" sign; and 4) that Appellant's invocation of the First Amendment cannot justify a special privilege to invade the property rights of others.

- A. Appellant knowingly and voluntarily entered a fenced residential yard unlawfully, despite a "No Trespassing" sign prominently displayed on the front closed gate of the Lovelace home.**

Appellant challenges the trial court's understanding and application of A.R.S. § 13-1504(A)(2), contending: 1) that a "No Trespassing" sign is insufficient to establish adequate notice since he was neither aware nor did he believe that his entering the front yard of the Lovelaces' home was an act of unlawful trespass; and 2) that he was licensed, authorized, and otherwise privileged to enter the Lovelaces' front yard because it was "his job" as a reporter. This Court rejects the Appellant's contentions based upon the following analysis.

Under A.R.S. § 13-1504(A), criminal trespass in the first degree is defined as follows:

- A. A person commits criminal trespass in the first degree by knowingly ...
- 2. Entering or remaining unlawfully in a fenced residential yard.
- B. Criminal trespass in the first degree under subsection A, paragraph 2 ... is a class 1 misdemeanor.

A.R.S. § 105(9)(b) defines the applicable mental state ascribed to A.R.S. § 13-1504(A) as follows:

"Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

The act giving rise to the offense charged under A.R.S. § 13-1504(A)(2) by *entering* or *remaining* in a fenced residential yard is defined under A.R.S. § 13-1501(2) as follows:

"Enter[ing] or remain[ing] unlawfully" means an act of a person who enters or remains on premises when the person's intent for so entering or remaining is not licensed, authorized or otherwise privileged except when the entry is to commit a theft of merchandise displayed for sale during

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

normal business hours, when the premises are open to the public and when the person does not enter any unauthorized areas of the premises.

For the purposes of our inquiry, the parties both agree that the act charged involves the entry of a *fenced residential yard* defined under A.R.S. § 13-1501(5) as follows:

“Fenced residential yard” means a unit of real property that immediately surrounds or is adjacent to a residential structure and that is enclosed by a fence, wall, building, or similar barrier or any combination of fences, walls, buildings, or similar barriers.

Interpreting a statute requires the court to “look ... [at] the statutory language and give effect to the words and phrases in accordance with their commonly accepted meaning”¹⁴ unless “[a] statute is to be read and applied in accordance with any special statutory definitions of the terms it uses (citation omitted).”¹⁵ “Where the criminal statute itself makes ... [it a] requirement ... that the defendant *know* his entry ... was unlawful, it is ... an essential element of the crime”, regardless of the definition of “knowingly” under A.R.S. § 13-105(9)(b).¹⁶ In State v. Malloy, the court held that “while the requisite intent may not be inferred from mere entry ... alone, any additional factor may be sufficient to warrant such an inference (citation omitted)” under Arizona law.¹⁷ Thus, “[i]n order to convict a defendant of criminal trespass, the prosecution must prove not only that the defendant knowingly, voluntarily, entered or remained, but it must also prove that the defendant was aware that his entry or remaining was unlawful.”¹⁸

Based upon the court’s examination of the statute, Appellant knowingly and voluntarily entered the front yard of the Lovelace home, aware that his entry constituted a breach of privacy given the Lovelaces’ display of a “No Trespassing” sign on the front gate. The “lawfulness” of the defendant’s activity and the “reasonableness” of notice are issues for the trier-of-fact to decide given the circumstances of the case.¹⁹ While the statute is silent on specific forms of notice, Appellant admits that he never received an invitation nor was he given permission by the Lovelace family that would make him licensed, authorized, or otherwise privileged to enter the front yard despite a “No Trespassing” sign.²⁰ The trial judge appropriately made the following findings of fact and conclusions:

¹⁴ State v. Barr, 183 Ariz. 434, 438, 904 P.2d 1258, 1262 (App. 1995).

¹⁵ State v. Hazlett, 205 Ariz. 523, 531, 73 P.3d 1258, 1266 (App. 2003).

¹⁶ State v. Kozan, 146 Ariz. 427, 429, 706 P.2d 753, 755 (App. 1985) (court found that the definition of criminal trespass requires that the person knowingly enter or remain unlawfully).

¹⁷ 131 Ariz. 125, 130, 639 P.2d 315, 320 (1981).

¹⁸ Id.

¹⁹ State v. Barr, 183 Ariz. at 439, 904 P.2d at 1263.

²⁰ See, In re Christopher R., 191 Ariz. 461, 957 P.2d 1004 (App. 1997) (court found sufficient evidence to hold a juvenile delinquent in violation of A.R.S. § 13-1504(A)(1) for trespassing on property where the juvenile never received permission from a personal representative of the property owner or his Grandmother’s estate for occupying a house that was leased by his Grandmother but never occupied by her or him due to her death).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

[1] That ... Debbs had a “No Trespassing” sign properly posted on the fence.

[2] That neither ... Debbs nor any other authorized person *consented* to or in any way *invited* the defendant’s entrance onto the property.

[3] That the fence and the sign together manifested a clear *intent* to forbid intrusion upon the property by the defendant.

[4] That ... the property owner’s personal privacy *outweighs* the defendant’s desire as a newspaper reporter to obtain information on behalf of the public.

[5] That the defendant’s entry on the property was not licensed otherwise, or otherwise privileged [emphasis added].²¹

The practical effect of the “No Trespassing” sign was to reasonably and effectively put Appellant on notice that he did not have the owner’s permission to enter the yard. Whether or not Appellant believed his act to constitute a violation of the law, Appellant was aware of the “No Trespassing” sign, and voluntarily entered a fenced residential yard surrounded by a three-foot high cinder block stucco fence with a closed gate, disregarding the posted sign.²² The sign had been posted prior to the activity in question on November 6, 2003, unobstructed and in plain sight from the street.²³ Thus, Appellant’s awareness of the sign put him on notice that his entering the front yard of the Lovelace/Debbs home would constitute a breach of privacy that the Lovelaces’ sought to prevent without express authorization or consent by them.

Appellant misunderstands A.R.S. § 13-1504(A)(2) in his testimony that he believes the meaning of “No Trespassing” is trespass when asked to leave or refusing to leave, or trespass with the intent to commit a criminal act such as burglary.²⁴ “A person commits a criminal trespass in the first degree by knowingly ... entering or remaining unlawfully in a fenced residential yard.”²⁵ While Appellant’s understanding of the statute correctly assumes that criminal trespass in the first degree includes a person *remaining* in a fenced residential yard, Appellant fails to take into account that entering *or* remaining in a fenced residential yard can both constitute a violation of the statute separately and individually.²⁶ In State v. Barr, the

²¹ R.T. of May 21, 2003 at 2-3.

²² R.T. of May 1, 2003 at 5-7, 65-66.

²³ Id. at 9.

²⁴ Id. at 70.

²⁵ § 13-1504(A)(2).

²⁶ While Arizona case law regarding this subject is scarce, courts often “look ... [at] the statutory language and give effect to the words and phrases in accordance with their commonly accepted meaning.” [State v. Barr, 183 Ariz. at 439, 904 P.2d at 1263] Black’s Law Dictionary 568 (Abridged 5th ed. 1983) states that *or* is “a disjunctive article used to express an *alternative* or to give a *choice* of one among two or more things[emphasis added].” In other words, a person could enter a fenced residential yard *or* remain in a fenced residential yard and either act will give rise to the charge under A.R.S. § 13-1504(A)(2), as long as that person is not licensed, authorized, and otherwise privileged to enter *or* remain in a fenced residential yard under A.R.S. § 1501(2).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

defendant in that case refused to leave the Corporation Commission after several requests to do so due to his disruptive behavior.²⁷ The court upheld the jury's conviction of third degree trespass, finding the appellant had *remained* despite a request to leave, placing the appellant on notice to leave the premises.²⁸

Appellant claims that prosecution for trespass, given his daily review of the Chandler Police Department's booking slips, "requires conduct evidencing unlawful intent beyond the mere act of entering onto the property of another."²⁹ Appellant, in support of this argument, relies on State v. Boles. In Boles, a defendant's arrest was deemed lawful when officers observed the defendant leaving the back yards of private residences, stopping the defendant in an apartment complex with a "No Trespassing" sign.³⁰ The court held that the police had probable cause to arrest the defendant on the charge of third-degree trespass.³¹ Appellant's reliance on Boles is misguided because of the clear implication that Boles was casing apartments for future burglaries, and because the Boles opinion never addresses the elements commonly associated with a charge of criminal trespass in the first degree. Appellant's inference that unlawful intent is required beyond the mere act of entering the property unlawfully is never discussed in relation to A.R.S. § 13-1504(A)(2) nor is Appellant's contention supported by Boles, given its factual inapplicability to the statute at issue in this case. Therefore, this court must reject Appellant's contentions as neither supported by A.R.S. § 13-1504(A)(2) nor supported by *applicable* Arizona case law. "A person commits a criminal trespass in the first degree by knowingly ... *entering* ... unlawfully a fenced residential yard."³²

Appellant argues that he routinely enters gates and fenced yards to knock on doors seeking information about pending assignments. While Appellant's act may not have been the subject of a criminal charge previously, that does not mean that such an act cannot be the subject of a criminal charge in the present, especially when the act giving rise to the charge is an integral part of the statute. Appellant knowingly, voluntarily *entered* the front yard of the Lovelace/Debbs home, disregarding a "No Trespassing" sign when he knew he was not licensed, authorized, or otherwise privileged to enter the property. "Entering" a fenced residential yard when the intent for doing so is not licensed, authorized, or otherwise privileged is a violation of A.R.S. § 13-1504(A)(2).³³ Appellant's intent was to gather information on an issue of public importance. However, it was an unauthorized act in violation of the statute when Appellant, having ample notice, entered the Lovelaces' front yard. Appellant admits that he neither received an invitation nor the Lovelaces' permission to enter their property on or before

²⁷ 183 Ariz. at 438, 904 P.2d at 1262.

²⁸ 183 Ariz. at 439, 904 P.2d at 1263.

²⁹ Appellant's Opening Memo. at 7.

³⁰ 183 Ariz. 563, 569, 905 P.2d 572, 578 (App. 1995), vacated on other grounds 188 Ariz. 129, 933 P.2d 1197 (1997).

³¹ Id.

³² § 13-1504(A)(2).

³³ § 13-1501(2).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

November 6, 2003.³⁴ He also admits that his prior contact with the property owners on October 15, 2003, as well as his several phone messages left over a period of three weeks, failed to produce a license, authorization, or privilege extended to him by the Lovelace/Debbs family.³⁵

Accordingly, this court finds that the trial court correctly interpreted A.R.S. § 13-1504(A)(2) with respect to criminal trespass in the first degree, and applied that statute to the facts of this case.

B. Appellant's First Amendment protection against government interference of the press is not a *license to trespass*.

Appellant's second argument challenges the trial court's decision on the basis that Appellant, as a reporter, has "the legitimate purpose of 'gather[ing] the news' concerning an issue of ... public concern," protected by the First Amendment's guarantee of freedom of the press.³⁶ Appellant's argument is not supported by persuasive authority.

Currently, there is no Arizona case law addressing this issue. However, Arizona Constitution Article II, Section 6 provides:

Every person may freely speak, write, and publish on all subjects, *being responsible for the abuse of that right* [emphasis added].

Generally speaking:

The First Amendment has never been construed to accord newsmen immunity from ... crimes committed during the course of newsgathering. *The First Amendment is not a license to trespass* ... [emphasis added].³⁷

Statutes passed by a legislature to protect the rights of private property owners against trespass are generally found to be constitutional.³⁸ A general trespass statute may be constitutionally applied, even to those who are members of the press, so long as the statute is applied without discrimination and is not used to purposefully suppress First Amendment

³⁴ R.T. of May 1, 2003 at 67.

³⁵ Id.

³⁶ Appellant's Opening Memo. at 9.

³⁷ Belluomo v. KAKE TV & Radio, Inc., 3 Kan. App. 2d 461, 470-471, 596 P.2d 832, 842 (App. 1979), quoting Dietemann v. Time, Inc., 449 F.2d 245, 249 (9th Cir. 1971) (in Dietemann, the court held that Life Magazine cannot use the First Amendment as a license to trespass in order to intrude by electronic means the precincts of another's home).

³⁸ Corn v. State, 332 So.2d 4, 8 (Fla. 1976) ["While ... (there are) many regulatory measures protecting civil rights of citizens, ... (there is a) constitutional duty to protect rights of property and the business community"].

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

guarantees.³⁹ This court recognizes that the exercise of the right of free press demands the observance by reporters of their duty not to abuse such a right, but to use that right with all the reason and dignity that members of the press are obligated to uphold.⁴⁰ It is not the place of this court to enforce trespass laws that transform private interference with First Amendment activity into state interference.⁴¹ Such interference would preclude private property owners from enforcing their right to exclude others, and covert their property into public forums, open to any person claiming a First Amendment right.⁴²

While courts in other states have construed criminal trespass statutes in an effort to recognize narrow exemptions from prosecution,⁴³ reporters who are in violation of a criminal trespass statute are not exempt from prosecution simply because they are exercising a First Amendment right.⁴⁴ Whether or not Appellant's activity as a reporter is an exercise of his First Amendment right, it does not prevent the State charging Appellant with criminal trespass. Appellant bears the burden of showing that the statute, as applied by the trial court, violates the First Amendment's guarantee of freedom of the press.⁴⁵ However, where there has been no dedication of privately owned property to the use of the public, and in the absence of discriminatory intent to curtail the First Amendment's guarantee of freedom of the press, a criminal trespass statute is not unconstitutionally applied to persons who enter or are present on the private property of another, contrary to the wishes of the person in authoritative control, provided that the subject matter of the asserted right is unrelated to the nature of, or business activity conducted on the property.⁴⁶

³⁹ Gibbons v. Texas, 775 S.W.2d 790, 794 (Tex. App. 1989) (court held that a criminal trespass statute was constitutionally applied when Gibbons trespassed on church property while engaging in activities that are against church policy).

⁴⁰ Belluomo v. KAKE TV & Radio, Inc., 3 Kan. App. 2d at 470, 596 P.2d at 841-842 (court held defendant liable when defendant's representatives published information acquired by tortious conduct in news gathering).

⁴¹ City of Sunnyside v. Lopez, 50 Wash. App. 786, 796, 751 P.2d 313, 319 (Wash. App. 1988) (court affirmed a criminal trespass conviction when defendant trespassed on the grounds of a medical center for the purpose of exercising his First Amendment right to free speech).

⁴² Id.

⁴³ See In re Catalano, 29 Cal.3d 1, 171 Cal.Rptr. 667, 623 P.2d 228 (1981) (court found union representatives exempt from prosecution for criminal trespass since they, as part of the collective bargaining agreement, were in engaged in otherwise lawful union activity); see also State v. Shack, 58 N.J. 297, 277 A.2d 369 (1971) (court found that state criminal trespass statutes do not apply to representatives of agencies and organizations entering on the property of a farmer to help give aid to migrant workers working on the farm).

⁴⁴ People v. Harrison, 178 N.W.2d 650, 653, 383 Mich. 585, 593 (1970) (First Amendment does not grant a constitutional right to engage in activity that would compel others to tolerate such activity when owners of private or public property do not have or do not want such activity on their property).

⁴⁵ United States v. Gilbert, 920 F.2d 878, 883 (11th Cir. 1991) (court held that nothing in the Constitution requires private or public owners of property to grant access to people based on the First Amendment without due regard to the nature of the property or to the disruption it might cause).

⁴⁶ State v. Marley, 54 Haw. 450, 461, 509 P.2d 1095, 1104 (Hawaii 1973) [court held that criminal trespass statute was not unconstitutionally applied to protestors at privately owned business offices (Honeywell) whose business activities are essentially private in nature].

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

When Appellant has knowingly, voluntarily entered a fenced residential yard, knowing that he is not licensed, authorized, or otherwise privileged, he has no constitutional right to freedom of movement as a reporter on that private property.⁴⁷ While this court is sympathetic to Appellant's position that a free press is essential to a free and just society, the First Amendment neither immunizes trespassers nor creates any special exemption for reporters who violate criminal statutes of general applicability to all members of the public.⁴⁸ Appellant may not use his First Amendment rights to justify what is otherwise an illegal activity in violation of A.R.S. § 13-1504(A)(2).⁴⁹

Article II, Section 6 of the Arizona Constitution does not exempt Appellant from responsibility for abuses committed in the course of his work as a reporter. While the Arizona Constitution and the First Amendment to the United States Constitution afford an undoubted right to Appellant to gather news from any source, it does not grant Appellant a right of access, beyond that granted to all citizens, solely because he is a news gatherer, especially when the chosen means for acquiring such information are beyond the boundaries of the law.⁵⁰ The United States Supreme Court has held that the First Amendment does not guarantee the press a constitutional right of *special access* to information not available to the public generally.⁵¹ Furthermore, A.R.S. § 13-1504(A)(2) contains no exception or special privilege granted to news gatherers to engage in conduct that is prohibited within the statute. Appellant was never licensed or authorized to enter the Lovelaces' property, nor can he compel the Lovelaces' consent on the basis that he is a member of the press, protected by the First Amendment. Appellant cannot use the First Amendment as a shield from prosecution when his act is clearly defined and prohibited within the statute. This court may not accord special status to Appellant as a reporter when no such exemption exists in the statute or Arizona law. Reporters must be held to no less a standard of adherence to the law than any other individual that is faced with a "No trespassing" sign.

This Court finds that Appellant is not exempt from prosecution under A.R.S. § 13-1504(A)(2) on the basis of the First Amendment's right to freedom of the press or the protections guaranteed by Article II, Section 6, of the Arizona Constitution. I find no violation of Appellant's federal or state constitutional rights. Further, I find that the trial court was correct in its application of A.R.S. § 13-1504(A)(2) to a reporter, or news gatherer such as Appellant.

⁴⁷ State v. Steinmann, 569 A.2d 557, 560, 20 Conn. App. 599, 606 (App. 1990) (court held that the First Amendment does not give a right to freedom of movement when defendant knowingly trespasses on church property despite ample notice that he was not welcome on the property).

⁴⁸ United States v. Maldonado-Norat, 122 F.Supp.2d 264, 29 Media L. Rep. 1123 (D. Puerto Rico 2000).

⁴⁹ United States v. Sanusi, 813 F.Supp. 149, 155, 21 Media L. Rep. 2202 (E.D.N.Y. 1992) ("news gathering privilege" provides shield against government censorship; it is not a protection against otherwise illegal acts).

⁵⁰ City of Oak Creek v. King, 148 Wis.2d 532, 552, 436 N.W.2d 285, 293, 16 Media L. Rep. 1273 (Wis. 1989)[Wisconsin Supreme Court rejects claim of "news gatherers' privilege" from reporter convicted of disorderly conduct, finding "...under the First Amendment, the Appellant has an undoubted right to gather news from any source by means within the law (footnote omitted). However the Appellant does not have a First Amendment right of access, solely because he is a news gatherer, to the scene of this airplane crash when the general public has been reasonably excluded (footnote omitted)"].

⁵¹ Branzburg v. Hayes, 408 U.S. 665, 684-85, 92 S.Ct. 2646, 2658, 33 L.Ed.2d 626 (1972) (court held that newsmen "have no constitutional right of access to the scenes of crime or disaster when the general public is excluded....").

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000566-001 DT

07/02/2004

5. Conclusion

This court determines that the trial judge correctly concluded that Appellant violated A.R.S. § 13-1504(A)(2). Appellant knowingly, voluntarily entered a fenced residential yard without being licensed, authorized, or otherwise privileged to do so, with adequate notice that trespassing would not be permitted, given the presence of a “No Trespassing” sign prominently displayed on the front gate of the Lovelace/Debbs’ home. Furthermore, Appellant is not exempt from prosecution under A.R.S. § 13-1504(A)(2) due to the First Amendment’s guarantee of freedom of the press. The First Amendment to the United States Constitution, Arizona Constitution Article II, Section 6, and A.R.S. § 13-1504(A)(2) do not accord special status to reporters who are in violation of a criminal statute of general applicability to all members of the public.

IT IS ORDERED affirming the conviction, judgment of guilt and sentence imposed by the Chandler Municipal Court.

IT IS FURTHER ORDERED remanding this case back to the Chandler Municipal Court for all further and future proceedings.

IT IS FURTHER ORDERED designating this opinion for publication pursuant to Rule 9.11, Maricopa County Superior Local Rules of Practice.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT